

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

VIAHART, LLC

Plaintiff,

v.

DOES 1-54

Defendants

Civil Action No. 6:18-cv-00604

Judge: Hon. Robert W. Schroeder, III

Magistrate: Hon. K. Nicole Mitchell

DECLARATION OF MOLSON HART

I, Molson Hart, hereby declare the following:

1. “My name is Molson Hart. I am over eighteen years of age and am legally competent to make this declaration, which is true and correct, is based on my personal knowledge, and is made voluntarily and not under duress.
2. I am the CEO and founder of Viahart LLC. I founded it 10 years ago in 2010. This is my third declaration to the Court in this proceeding.
3. I make this declaration in support of Plaintiff’s Motion for Alternative Service of Process (“Motion”), which I have read in its entirety. The statements within are within my personal knowledge and are true and correct. I have come to personal knowledge of the stated facts by virtue of my position as Viahart’s CEO and founder.
4. Valid email addresses must be established and verified by each of the Marketplaces before the Defendants are able to list their products. Therefore, each Defendant in this case had to provide the Marketplaces with a working email in order

to operate and conduct business.

5. The attached Exhibit B consists of true and correct information I received from the Marketplaces pertaining to most of the Defendants' identities, the physical addresses where the Defendants can probably be found, the methods by which I have attempted contact / service on each of these Defendants (via personal delivery, mailing with return receipt requested, and/or email), and that such attempts have been unsuccessful.

6. The attached Exhibit C consists of true and correct communications and notifications from FedEx, which shows deficiencies in the Foreign Defendants' physical addresses.

7. The attached Exhibit D consists of true and correct affidavits of nonservice from U.S. process servers, which shows deficiencies in the Domestic Defendants' physical addresses.

8. The attached Exhibit E is a true and correct substantive representation of the email I sent to each Defendant in this case.

9. The attached Exhibit F consists of true and correct email correspondence between myself and some of the Defendants that responded to my emails.

10. The attached Exhibit G consists of the text of an Order entered on May 14, 2020 in the Western District of Texas between BVE Brands, LLC (a company for which I am a 50% owner), and 82 currently unknown defendants.

11. I apologize for the length of time it has taken to attempt to serve the defendants. It was an extremely challenging process that was not made easier by the Marketplaces, but they ultimately gave us the Defendants' alleged addresses.

12. I don't believe this process has been fair to my company. I have spent many tens of thousands of dollars, and every step of the way I have told the Court the truth and then been proven right each time.

13. While waiting for a favorable outcome that would allow us to finally achieve justice, we have lost sales, suffered damage to our Brain Flakes® brand, and seen the Defendants who we have sued awarded “Amazon’s Choice” for selling counterfeit products bearing our Brain Flakes® trademark.

14. As you will see from the evidence we submit here, we believe the Defendants are, with a few exceptions, mainly based in China. In response to the Court’s order, we have worked diligently to find the addresses of the Defendants. In my professional experience, this is a very difficult process. I have testified before Congress about e-commerce. I speak Chinese. I am a supply chain and logistics expert. The location and identify of a counterfeiter cannot be determined from the ship-from label. Third party logistics companies do the shipping for e-commerce providers, and many defendants ship from Amazon fulfillment centers, instead of a defendants’ address.

15. For the Defendants with US addresses, we hired process servers. There were eleven. Ten could not be served, mostly because the addresses were fake. One was served but refused to provide an ID. For the overseas Defendants with physical address provided by a Marketplace, we sent FedEx envelopes to confirm whether the addresses were accurate. These addresses were deemed by FedEx to have an incorrect address, to have been refused, or the Defendant was not there. An additional 8 Defendants had zero address information from the Marketplace so there is no way to physically serve them. Finally, the rest have disappeared from the United States completely. They no longer have active accounts on the ecommerce platforms nor websites, so we will recover zero damages from them for the harms they have caused us. It pains me to write that, especially knowing how much I have spent.

16. While I have never done Hague service, I have read about it extensively and if the Court decides that we need to do that, not only will it be multiple years before service is possible (if it ever is, noting the coronavirus and US-China relations), it will cost us additional 10s of \$1000s. Meanwhile, as many defendants have already, the defendants will close their shops and take their counterfeit money with them. Basically it will be a disaster, both for our brand (both legally and in the eyes of

consumers) and financially, potentially compelling us to appeal (or whatever the proper legal course action is) such a decision.

17. It is my hope that the Court makes what I wholeheartedly believe is the right decision, and I welcome the opportunity to answer any further questions the Court may have of me. Please allow email service and allow us to start this case.”

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 29, 2020

Mike Molson Hart

Mike Molson Hart (May 29, 2020 16:16 CDT)

Molson Hart